



The Virginia State Banker

Regulatory news for Virginia State-chartered Banks

E.J. Face, Jr., Commissioner
Bureau of Financial Institutions - State Corporation Commission



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The Virginia State Banker is published by the Virginia Bureau of Financial Institutions to provide useful information to the banks and savings institutions that it regulates, and any of their related interests. Reader comments and suggestions are welcome and should be addressed to Ginger Sandler, Bureau of Financial Institutions, P.O. Box 640, Richmond, Virginia 23218-0640, or via e-mail ginger.sandler@sc.virginia.gov.

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LEGAL NAMES AND FINANCING STATEMENTS

Despite requirements in Revised Article 9 as well as language on financing statements clearly instructing preparers to use only full exact legal names with no abbreviations, banks continue to file financing statements with nicknames, abbreviations, misspellings, lack of suffixes, the usage of middle names as first names, and little or no punctuation such as hyphens, commas, or slashes.

Exact legal names for corporations and other legal entities can be ascertained via certificates of existence or good standing and for individuals may be obtained from driver's licenses or birth certificates. If an entity's legal name is XYZ Corporation, then a financing statement showing XYZ Corp. is incorrect. Financing statements on ABC, Incorporated should not show ABC, Inc. UCC filings on Jonathan Anderson Doe should not read John A. Doe. Section 9-506(a) of Revised Article 9 appears to give creditors some leeway with regards to very minor name errors so long as the mistakes are not deemed "seriously misleading." Unfortunately for secured parties, a number of court cases have emphasized the need for correct names, "misleading" or not. The case of Terrence Joseph Kinderknecht v. Deere and Company and Deere Credit Services, Inc. could be considered pivotal in this regard.

Kinderknecht filed for Chapter 7 Bankruptcy protection. Deere Credit Services had previously financed two farm implements for the individual. Financing statements were filed in the name of Terry J. Kinderknecht. Kinderknecht contended that the creditor's usage of a nickname meant that lien perfection had not been established. Bankruptcy Court for the District of Kansas initially ruled in favor of Deere; however, after an amicus brief filed by the Kansas Secretary of State, an appellate panel reversed the initial decision and ruled in favor of Kinderknecht — avoiding Deere's security interests. Details of this and other cases including F.V. Steel and Wire Co. and Corona Fruits & Veggies, Inc. may be garnered from an Internet search on Google or Yahoo.

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A December 1, 2006 opinion by the U.S. Bankruptcy Court in the Eastern District of Virginia also addresses these issues. The case is The Official Committee of Unsecured Creditors for Tyringham Holdings, Inc. v. Suna Bros. Inc. (Case No. 06-32385-DOT).

STATES FIRMLY COMMITTED TO SUPERVISORY OVERSIGHT OF MORTGAGE LENDING, CSBS TELLS HOUSE SUBCOMITTEE

In testimony on March 27, 2007 before the House Financial Services Subcommittee on Financial Institutions and Consumer Credit, Massachusetts Commissioner of Banks Steven L. Antonakes said state regulators have actively pursued unfair and deceptive practices in the mortgage market.

However, he said, most state actions have not received much media coverage, contributing to the perception that the industry is largely unregulated.

"In 2006 alone, states took 3,694 enforcement actions against mortgage lenders and brokers based on problems found during routine examinations of mortgage companies," Antonakes said. He added that through three nationwide settlements alone, state regulators have returned over \$800 million to borrowers.

Antonakes appeared on behalf of the Conference of State Supervisors (CSBS), alongside federal banking regulators at the hearing on how agencies regulate

subprime mortgages as well as brokers who engage in real estate lending that may be categorized as predatory.

Antonakes described several initiatives currently under way to further improve state supervision of the mortgage industry:

- A national mortgage licensing system and database that will feature single records for every state-licensed mortgage company, branch, and individual loan originator;
- Issuance of guidance on nontraditional mortgage products to parallel federal guidance setting forth sound underwriting standards and consumer protection provisions; and
- Expected state regulatory adoption of a proposal currently under consideration by federal financial regulators dealing with subprime mortgage lending.

For example, CSBS would like to work with our federal counterparts to

encourage our supervised entities to reach out to those consumers whose adjustable-rate mortgages are scheduled to reset this year," he suggested.

Antonakes added that state regulators are frustrated in their efforts to protect consumers by federal pre-emption of state consumer protection laws.

"State legislatures have the right to expect the laws they pass to be followed by companies operating in their states," he said, adding that 37 states have acted by passing predatory lending laws only to have them voided by OCC and OTS rulings.

Antonakes, who holds the state regulators' seat on the Federal Financial Institutions Examination Council, recommended better coordination among states and between state and federal regulators as a way to improve accountability for mortgage brokers/lenders and provide consistency across the industry to the benefit of the borrower.

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SPRING VIRGINIA BANK DIRECTORS' COLLEGE

The Virginia Bureau of Financial Institutions, the Federal Reserve Bank of Richmond, and the Federal Deposit Insurance Corporation will present the *Essential Principles* session of the Virginia Bank Directors' College at the Omni Hotel in Charlottesville on May 2 and 3, 2007.

The *Essential Principles* session provides newer bank directors an opportunity to gain a better understanding of bank operations and bank directors' responsibilities. This information also may provide a significant learning opportunity for the more experienced director who has not previously attended. This year's program includes presentations on corporate governance, internal

controls, CAMELS ratings, and red flags for new banks and bank directors.

The *Emerging Issues* session is scheduled this fall in four locations around the state. This session highlights information applicable to all bank directors and provides an opportunity for bank directors to remain informed and current on industry and bank-specific issues.

Program brochures were mailed in late February. If you need additional information, please call Betty Nolan at the Virginia Bureau of Financial Institutions, (804) 371-9704.

APPLICATION ACTIVITY CONTINUES UPWARD TREND

The Bureau experienced another record year in application filings for various certificates of authority and licenses. The total number of application filings increased to 3,484 in 2006, compared to 3,207 in 2005 and 2,971 in 2004. Mortgage lender/broker application filings (which include applications for additional offices and new licenses) were 2,416 in 2004; 2,757 in 2005; and 2,807 in 2006. The mortgage industry filed 81% of total applications received. Banks and trust companies filed 162 applications in 2006, compared to 132 applications in 2005 and 137 applications in 2004. In addition to the banking/trust and mortgage industries, the Bureau regulates and processes applications

from credit unions, savings institutions, check cashers, consumer finance companies, credit counseling agencies, industrial loan associations, money transmitters, and payday lenders. Presently, the Bureau regulates 3,226 financial institutions with thousands of offices. A breakdown of applications filed by banks and trust companies in 2006 is as follows: 118 applications for branch expansion, 12 applications for relocations, 15 applications for acquisitions, 11 applications for mergers, 3 applications for new banks, and 3 applications for trust business. At the end of 2006, the Bureau regulated 89 banks.

VIRGINIA SENATE JOINT RESOLUTION NO. 507

Bill sponsored by Walter Stosch

Offered February 14, 2007
Celebrating the life of Sidney A. Bailey

 Patron -- Stosch

WHEREAS, Sidney A. Bailey, former Commissioner of Financial Institutions for the State Corporation Commission, died on October 28, 2006; and

WHEREAS, a native of West Virginia, Sidney Bailey graduated from high school in Christiansburg, Virginia, in 1947 and immediately enlisted in the Navy; and

WHEREAS, Sidney Bailey switched to the Air Force in 1950 and served in the Korean War; and

WHEREAS, after graduating from the University of Virginia's McIntire School of Commerce in 1958, Sidney Bailey joined the federal Office of the Comptroller of the Currency (OCC) as an assistant national bank examiner; and

WHEREAS, in 1967, Sidney Bailey earned a master's degree in business administration from the College of William and Mary and then worked in the OCC's regional office in Richmond from 1967 to 1970; and

WHEREAS, after spending a year in Washington, D.C., as assistant chief national bank examiner in the OCC, Sidney Bailey moved to Memphis, Tennessee, to be Deputy Regional Administrator of National Banks, a position he held from 1971 to 1977; and

WHEREAS, in 1977, Sidney Bailey was hired to lead the Virginia Bureau of Financial Institutions, a division of the State Corporation Commission, and he rendered distinguished service to the Commonwealth for two decades, making sure Virginia financial institutions lived up to their obligations to their customers; and

WHEREAS, the greatest challenge of Sidney Bailey's tenure was the savings and loan crises of the 1980s and early 1990s, and it is in part due to his wisdom and leadership that Virginia banks escaped relatively unscathed from those tumultuous years; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, that the General Assembly hereby note with great sadness the loss of Sidney A. Bailey, a dedicated public servant and a fine Virginian; and, be it

RESOLVED FURTHER, that the Clerk of the Senate prepare a copy of this resolution for presentation to the family of Sidney A. Bailey as an expression of the General Assembly's respect for his memory.

BUREAU ANNUAL REPORT POSTED TO WEB SITE

The 2006 Annual Report of the Bureau of Financial Institutions has been posted on the Bureau's Web site at <http://www.scc.virginia.gov/division/banking/annual.htm>. The report is divided into four sections: (a) Banks, Savings Institutions, Trust Companies, and Credit Unions; (b) Mortgage Lenders and Broker Licensees, Industrial Loan Associations, Money Transmitters, and Credit Counseling Agencies; (c)

Consumer Finance Licensees; and (d) Payday Lender Licensees and Registered Check Cashers. Report Sections for Consumer Finance Licensees and Payday Lenders will be updated during April to include operating data for these industries. A 2006 consolidated report for the Bureau will be published in the Spring after review of annual reports filed by the 11 different types of financial institutions and licensees regulated by the Bureau.

STATES FIRMLY COMMITTED TO SUPERVISORY OVERSIGHT

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"We recognize that there are regulatory weaknesses in our current system of both state and federal supervision. It is important that we debate and discuss these weaknesses. However, we need to move toward finding common solutions," he said.

His testimony may be found at http://www.house.gov/apps/list/hearing/financialsvcs_dem/ht032707.shtml.

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Commissioner Face is Chairman of CSBS, the nationwide organization for state banking, representing the bank regulators

of the 50 states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. CSBS is responsible for defending state authority to determine banking structure and the products and services state-chartered institutions can offer and for improving the quality of state bank supervision by providing department performance evaluation and accreditation programs and supervisory education/training programs for state banking department personnel.

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IMPORTANT TELEPHONE NUMBERS

- Banks and Savings Institutions (804) 371-9704
- Consumer Finance and Mortgage Companies (804) 371-9701
- Licensing (applications, name changes, annual reports) (804) 371-9690
- Consumer Complaints (804) 371-9705
- Corporate Information (SCC Clerk's Office) (804) 371-9733
- Bureau's FAX number (804) 371-9416
- TDD (804) 371-9206

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**Check out our Web site at [http://
www.scc.virginia.gov/division/
banking/](http://www.scc.virginia.gov/division/banking/)**
